

## REMARKS

### General

Claims 1-25 are pending, claims 1-8 are withdrawn, and claims 9-25 are rejected by the Office Action mailed October 19, 2006. Claims 19 and 23 are amended by this response. The issues in the current Office Action are as follows:

- Claim 19 is rejected under 35 U.S.C. §112 as being indefinite.
- Claims 9, 10, 12-18, and 22-25 are rejected under 35 U.S.C. §102(b) as being anticipated by “IP Spoofing Demystified,” Phrack Magazine, Vol. 7, issue 48, file 14 of 18, June 1996 (hereinafter, *Phrack*).
- Claims 11, 20, and 21 are rejected under 35 U.S.C. §103(a) as being obvious over *Phrack*.

Applicant hereby traverses the rejections and requests reconsideration and withdrawal in light of the remarks contained herein.

### Claim Amendments

Claim 19 is amended to depend from claim 18. This merely corrects a small error and adds no new matter. The amendment is not in response to any art.

Claim 23 is amended to recite, “said enterprise system.” This merely corrects a small error and adds no new matter. The amendment is not in response to any art, nor does it narrow the scope of the claim.

### Rejection Under 35 U.S.C. §112

On page 2 of the Office Action, claim 19 is rejected under 35 U.S.C. §112 as being indefinite. Applicant has amended claim 19 to correctly depend from claim 18. Accordingly, withdrawal of the rejection is respectfully requested. Applicant thanks the Examiner for bringing this to attention.

**Rejection Under 35 U.S.C. §102**

On pages 2-3 of the Office Action, claims 9, 10, 12-18, and 22-25 are rejected under 35 U.S.C. §102(b) as being anticipated by *Phrack*. Applicant traverses the rejection.

To anticipate a claim under 35 U.S.C. § 102, a reference must teach every element of the claim. See M.P.E.P. § 2131. Moreover, in order for an applied reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Furthermore, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim.” M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As discussed further below, these requirements are not satisfied by the 35 U.S.C. § 102 rejection because *Phrack* does not teach every element of the claims.

*Phrack* appears to be a magazine article that describes a particular type of “IP-spoofing” in Unix. The passage at page 8 identifies four “Preventitive [sic] measures” to guard against such spoofing. One such suggested technique is to not rely on address-based authentication. The second technique is to use a router to filter out all traffic coming from the Internet that purports to be from inside the LAN. The third method is to require all network traffic to be encrypted and/or authenticated. Fourth, *Phrack* suggests random or pseudorandom sequence number initialization.

Independent claim 9 recites, in part, “said processor further operative for diverting to said temporary storage device selected data entering said system.” *Phrack* does not teach this feature of claim 9 at least because it does not teach diverting selected data to a temporary storage device. The Office Action cites the portion of *Phrack* at page 8 that suggests a LAN administrator use a router to filter out all traffic coming from the Internet that purports to be from inside the LAN. However, filtering out traffic ,without more, is not enough to teach diverting data to a temporary storage area. Simply put, *Phrack* does not appear to teach or even mention diverting data to a temporary storage area. Accordingly, *Phrack* does not teach the above-quoted feature of claim 9.

Independent claim 12 recites, in part, “upon attainment of packet flow volume into said system reaching a certain level, temporarily storing certain subsequently received packets in accordance with selective remembered parameter of previously received packets.” *Phrack* does not teach this feature of claim 12 at least because *Phrack* does not appear to teach temporarily storing certain subsequently received packets upon attainment of packet flow volume into a system reaching a certain level. In fact, *Phrack* does not teach taking any action upon attainment of packet flow volume into a system reaching a certain level. Accordingly, *Phrack* does not teach the above-quoted feature of claim 12.

Independent claim 22 recites, in part, “preventing selected data from passing said particular point when the data handling capability associated with that point reaches a preset limit, said preventing step relying on said remembered parameters pertaining to data previously passing said particular point.” *Phrack* does not teach this feature of claim 22. Specifically, *Phrack* does not appear to teach preventing selected data from passing a certain point when the data handling capability associated with that point reaches a preset limit at least because *Phrack* does not appear to teach preset data handling capability limits. Accordingly, *Phrack* does not teach the above-quoted feature of claim 22.

Independent claim 23 recites, in part, “a delay path operable when the amount of data currently being handled by said enterprise system reaches a certain threshold for temporarily removing selected data which is directed to said enterprise system away from said enterprise system.” *Phrack* does not teach this feature of claim 23 at least because it does not appear to teach a delay path. Based on the rejection of claim 9, it is believed that the Examiner may rely on the portion of *Phrack* at page 8 that suggests a LAN administrator use a router to filter out all traffic coming from the Internet that purports to be from inside the LAN. However, filtering out traffic, without more, is not enough to teach a delay path, much less a delay path operable to take action when an amount of data being handled reaches a threshold. Accordingly, *Phrack* does not teach the above-quoted feature of claim 23.

Dependent claims 10, 13-18, 24, and 25 each depend either directly or indirectly from respective independent claims 9, 12, and 23 and, thus, inherit all of the limitations of their respective independent claims. Thus, *Phrack* does not teach all claim limitations of claims 10, 13-18, 24, and 25. It is respectfully submitted that dependent claims 10, 13-18, 24, and

25 are allowable at least because of their dependence from their respective base claims for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 102 rejection of claims 9, 10, 13-18, 24, and 25.

#### **Note on inherency**

On page 3 of the Office Action, the rejection states:

Regarding claims 10, 12-18, 22-25, see pages 8-9. These pages show that the details of keeping track of the network as in these claims are inherent to the situation noted in pages 8-9.

Applicant respectfully notes that not one of claims 10, 12-18, or 22-25 recites, “keeping track of the network.” Thus, it is believed that this comment is simply inapplicable to the claims at issue.

Further, the rejection has failed to “provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” See M.P.E.P. §2112(IV), citing *Ex Parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat App. & Inter. 1990). In other words, it is not enough to allege that something is present in a reference—there must be reasoning that shows that it must be in the reference. The Office Action, however, merely asserts that “keeping track of the network” is inherent because pages 8-9 “show” it, and the Office Action does not give reasoning or evidence tending to show that any claimed feature from claims 10, 12-18 and 22-25 is necessarily present in *Phrack*. Should the Office persist in this rejection, it is respectfully requested that it identify limitations in the claims and offer such technical reasoning for each of those limitations to give the Applicant a fair chance at rebutting such assertions.

#### **Rejections Under 35 U.S.C. §103**

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the applied reference. Second, there must be a reasonable expectation of success. Finally, the applied reference must teach or suggest all the claim limitations. See M.P.E.P. §

2143. Without conceding any other criteria, Applicant respectfully asserts that the rejection does not satisfy the third criterion, as discussed further below.

Dependent claims 11, 20, and 21 each depend either directly or indirectly from respective independent claims 9 and 12 and, thus, inherit all of the limitations of their respective independent claims. Thus, *Phrack* does not teach or suggest all claim limitations of claims 11, 20, and 21. It is respectfully submitted that dependent claims 11, 20, and 21 are allowable at least because of their dependence from their respective base claims for the reasons discussed above.

Further, Applicant respectfully notes that the Office Action does not cite a reference to teach the individually-recited features in claims 11, 20, and 21. The Office Action simply asserts that “Phrack does not teach the displaying as in these claims. Nevertheless, it would have been obvious to have such displaying for the motivation of easier control by the system handling person.” In other words, the rejection acknowledges that *Phrack* does not teach some aspects of the claim limitations but says that “displaying as in these claims” is obvious. However, the rejection does not cite a reference to teach or suggest the material that is acknowledged is not in *Phrack*. Nor does the Office Action use Official Notice to assert that such features are well-known. (It should also be noted that even if the rejection intends such statement to be Official Notice, the statement does not comply with the requirements of Official Notice found in M.P.E.P. §2144.03). Should the Office persist in the rejection, the citation of a reference is respectfully requested so that patentability may be explored. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103 rejection of claims 11, 20, and 21.

## **Conclusion**

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 58895/P001CP1CP1/10111610 from which the undersigned is authorized to draw.

Dated: January 18, 2007

Respectfully submitted,

By 

Thomas Kelton

Registration No.: 54,214

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-7115

(214) 855-8200 (Fax)

Attorney for Applicant